

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

RP.No. 456 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRP.71/2002 Dated 01/11/2006
CMA 69/94 of the District Court, Pathanamthitta
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: REVIEW PETITIONERS/REVISION PETITIONERS

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIVISIONAL FOREST OFFICER,
KONNI.

BY SPL GOVERNMENT PLEADER, FORESTS SRI.M.P.PRAKASH

RESPONDENT:

DR.DAYANANDAN, S/O.M.S.NANU VAIDYAN,
NIRMALA BHAVAN, KONNI VILLAGE,
MANARAM MURI.

BY ADV. SRI.T.R.HARIKUMAR
DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

M.N.Krishnan, J.
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R.P.No.456/2007
in
C.R.P.No.71 of 2002
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Dated this the 15th day of November, 2007.

ORDER

This Review Petition is preferred against the order of a learned Judge of this Court dated 1.11.2006. Brief facts necessary for the disposal of the Review Petition are as follows:

2. By virtue of an order dated 13.5.1994 the Deputy Conservator of Forests, Konni ordered confiscation of the thondi materials involved in OR.No.21 of 1992 of Konni Range. The allegations are that the respondent in the Review Petition was found to be in possession of 179 pieces of sawn teak planks and on 22.7.1992 the Forest Officials conducted a search and found out the same. Thereafter, a crime was registered under the provisions of the Forest Act as OR No.21 of 1992 under section 27(d) of the Kerala Forest Act (hereinafter referred to as "the Act"). The respondent in the Review Petition moved a claim

petition and thereafter obtained a direction from this Court for the disposal of the matter on 13.5.1994. The Deputy Conservator of Forests found against the respondent and ordered confiscation.

3. Aggrieved by the said decision, the respondent herein moved the District Court a C.M.A.No.69 of 1994 under Section 61 D of the Act. The learned District Judge on an appreciation of the materials held that the seizure is not proper and set aside the order of confiscation and directed release of the same in favour of the respondent. The learned District Judge also held that the burden is on the Government to prove that the timber found in the possession of the appellant was the property of the Government. Against the said decision, Civil Revision Petition was filed before this Court and the learned Judge of this Court found no ground to interfere with the order and dismissed the Civil Revision Petition. It is to review the said order on the ground that there are mistakes apparent on the face of the records and that the legal aspects have not been adverted to, the application for review is filed.

4. Learned Government Pleader mainly harps on two

provisions of the Act and Rules. He had drawn my attention to Section 69 of the Act wherein it is stated thus: "When, in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Central or State Government, such produce shall be presumed to the property of the Central or State Government, as the case may be, until the contrary is proved." He had also drawn my attention to the definition of "forest produce", which is defined under Section 2(f) of the Act. Certainly it will take in timber. Then, the learned counsel referred to Rule 10 of the Kerala Forest Produce Transit Rules which deals with passes and submits that the movement shall only through the route prescribed and no diversion is permissible. Learned Government Pleader on the basis of these statutory provisions contends before me that this Court had not applied Section 69 of the Act nor considered Rule 10 of the Kerala Forest Produce Transit Rules and therefore there is error apparent on the face of the records, which requires intervention by reviewing the order. 5. There cannot be any dispute regarding the provisions with respect to presumption. But

presumptions shall always one which are rebuttable. When materials are placed before the court or authority and it is analysed and there are materials to show that the presumption had been properly explained away, then naturally the burden will shift on to the other side to establish the same. The contention of the respondent in the Review Petition is that he is running a Nursing Home at Konni and that he had purchased wooden materials from the Forest Department and the Government have issued three passes as Nos.365/90, 41/85-86 and 57/85-86. His definite contention is that the timber materials found in the premises which belong to him are the remaining of the wooden materials purchased by him and transported by him under the passes. The Deputy Conservator of Forests rejected these passes on the ground that the destinations in the passes are to Konni, Varkala and Harippad. So far as the destination pass No.365/90 is concerned, it only relates to Konni where the materials are stored. When a person puts forward the contention and submits that he was constructing a hospital building in Konni and for the purpose of the said construction, he had purchased Government timber and had transported under valid passes if there is

supporting evidence that has to be looked into by the court especially when there is no materials available to hold it otherwise. Just because the pass is taken to a place from Konni it does not ipso facto follow that the wooden materials could not have been transported to Konni at all. Whatever it may be the first pass only relates to Konni and Konni alone and so there is some evidence adduced before the authority for consideration to show that the Government timber has been purchased and has been transported for use. Therefore, the possession of timber wood is explained by the respondent in this case.

6. Now let us see whether there is any evidence which by a remote possibility can nullify the effect of this explanation. According to the Forest Department they have registered a crime under Section 27(d) as OR 21/92. But it is seen that no mahazar is prepared. It is also not seen whether an investigation was done and charge was laid and the matter was prosecuted. Learned Government Pleader is not in a position to say whether there was any criminal prosecution at all against this person in the light of the crime registered as OR No.21/92. Therefore, I find no considerable force in the contention of the learned

Government Pleader that presumption is not rebutted.

7. I do feel that the District Judge was not correct to say that the burden of proof is on the Government. But when the materials are placed and they are analysed and if it is found that the presumption under Section 69 of the Act is properly and at least prima facie satisfactorily explained, then certainly there is burden on the Government also to prove the same. Further it can be seen that even the confiscation order was passed not invoking Section 61 D of the Act suo motu by the Deputy Conservator of Forests. But he has passed such an order in an application filed as claim petition by the respondent in the revision petition. So it is very clear that things are not clear that so far as the Department is concerned and when there are sufficient materials at least prima facie to prove valid possession then certainly there is a responsibility cast upon the officers confiscating the materials to prove that it belongs to the Government. The mere finding that sawn timber logs were lesser in size cannot be a reasonable explanation at all for the reason that the wood was purchased for the purpose of construction and it has been cut into pieces and preserved for

construction purposes.

8. So these are all grounds which cannot be held to be sufficient to prove it otherwise. It is true that the matter has not been elaborately considered, but the facts remain that this Court has also applied its mind and found the correctness of the decision of the learned District Judge and in the light of the foregoing discussions made by me I also do not find any ground to arrive at a different decision and therefore I decline to review the order passed by this Court and as there are no mistakes apparent on the face of the records or any other grounds which warrants a review.

Therefore, the Review Petition lacks merits and it is dismissed.

M.N.Krishnan,
Judge.

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